

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DOMINICK BERADUCCI,

Plaintiff,

07 CV 7110 (Judge Buchwald)

- against -

ANSWER

THE CITY OF NEW YORK, DEPARTMENT OF
CORRECTION COMMISSIONER MARTIN F.
HORN, PRISON HEALTH SERVICES, INC., MICHAEL
CATALANO, C.E.O. OF PRISON HEALTH SERVICES,
INC., SYLVAN SABAL, R.P.A. DOHMH MEDICAL
DIRECTOR TREVOR PARKS, DOHMH PROGRAM
DIRECTOR REBECCA PINNEY, DOHMH DEPUTY
COMMISSIONER JAMES CAPOZIELLO, DOHMH
MEDICAL DIRECTOR DOCTOR BENJAMIN
OKONTA, PRISON HEALTH SERVICES, INC.,
NURSES JOHN DOE 1-5, PRISON HEALTH
SERVICES, INC., DOCTORS JOHN DOE 1-5, PRISON
HEALTH SERVICES, INC., PHYSICIANS'
ASSISTANTS 1-5, PRISON HEALTH SERVICES, INC.,
PHARMACISTS JOHN DOE 1-5, DEPARTMENT OF
CORRECTION EMPLOYEES, JOHN DOE 1-5

**TRIAL BY JURY
DEMANDED**

Defendants.
-----X

Defendant JAMES CAPOZIELLO, s/h/a "DOHMH DEPUTY COMMISSIONER
JAMES CAPOZIELLO," by his attorneys, HEIDELL, PITTONI, MURPHY & BACH, LLP, Of
Counsel to Richard Levy, General Counsel of New York City Health and Hospitals Corporation,
upon information and belief, answers the complaint herein as follows:

AS AND TO THE SECTION DESIGNATED "PRELIMINARY STATEMENT"

FIRST: With respect to the paragraphs in the complaint designated "1" through
"3" as plaintiff makes no allegation, no response is required. Answering defendant disagrees
with the plaintiff's recitation of the facts that are the basis of his claim and denies all allegations
of negligence and violations of civil rights implied in these paragraphs.

AS AND TO THE SECTION DESIGNATED "JURISDICTION"

SECOND: With respect to the paragraph in the complaint designated "4" as plaintiff makes no allegation, no response is required.

THIRD: Denies the allegations contained in the paragraphs of the complaint designated "5" and "6" and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE SECTION DESIGNATED "PARTIES"

FOURTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph of the complaint designated "7," except admits that at certain times not specifically set forth in the complaint plaintiff was housed at the Anna M. Kross Center and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

FIFTH: Denies the allegations contained in the paragraphs of the complaint designated "8" and "9" and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

SIXTH: Denies the allegations contained in the paragraphs of the complaint designated "10" and "11," except admits that Prison Health Services, Inc. provides medical services to inmates at Riker's Island. Answering defendant further admits that at certain times not specifically set forth in the complaint, the answering defendant and defendant Okonta were and are affiliated with Prison Health Services, Inc. and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

SEVENTH: Denies the allegations contained in the paragraphs of the complaint designated “12” through “17” and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE SECTION DESIGNATED “NOTICE OF CLAIM”

EIGHTH: With respect to the paragraph in the complaint designated “18” as plaintiff makes no allegation, no response is required.

AS AND TO THE SECTION DESIGNATED “CERTIFICATE OF MERIT”

NINTH: With respect to the paragraph in the complaint designated “19” as plaintiff makes no allegation, no response is required.

AS AND TO THE SECTION DESIGNATED “JOINT LIABILITY”

TENTH: Denies the allegations contained in the paragraph of the complaint designated “20” and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE SECTION DESIGNATED “FACTUAL ALLEGATIONS”

ELEVENTH: Denies the allegations contained in the paragraphs of the complaint designated “21” through “25” and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE FIRST CAUSE OF ACTION

TWELFTH: Answering the paragraph of the complaint designated “26,” defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated “1” through “25” with the same force and effect as if herein set forth at length.

THIRTEENTH: Denies the allegations contained in the paragraphs of the complaint designated “27” and “28” and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE SECOND CAUSE OF ACTION

FOURTEENTH: Answering the paragraph of the complaint designated “29,” defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated “1” through “28” with the same force and effect as if herein set forth at length.

FIFTEENTH: Denies the allegations contained in the paragraphs of the complaint designated “30” through “40” and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE THIRD CAUSE OF ACTION

SIXTEENTH: Answering the paragraph of the complaint designated “41,” defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated “1” through “40” with the same force and effect as if herein set forth at length.

SEVENTEENTH: Denies the allegations contained in the paragraphs of the complaint designated “42” through “46” and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE FOURTH CAUSE OF ACTION

EIGHTEENTH: Answering the paragraph of the complaint designated “47,” defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated “1” through “46” with the same force and effect as if herein set forth at length.

NINETEENTH: Denies the allegations contained in the paragraphs of the complaint designated “48” through “50” and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE FIFTH CAUSE OF ACTION

TWENTIETH: Answering the paragraph of the complaint designated “51,” defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated “1” through “50” with the same force and effect as if herein set forth at length.

TWENTY-FIRST: Denies the allegations contained in the paragraphs of the complaint designated “52” and “53” and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE SIXTH CAUSE OF ACTION

TWENTY-SECOND: Answering the paragraph of the complaint designated “54,” defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated “1” through “53” with the same force and effect as if herein set forth at length.

TWENTY-THIRD: Denies the allegations contained in the paragraphs of the complaint designated “55” through “58” and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE SEVENTH CAUSE OF ACTION

TWENTY-FOURTH: Answering the paragraph of the complaint designated “59,” defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated “1” through “58” with the same force and effect as if herein set forth at length.

TWENTY-FIFTH: Denies the allegations contained in the paragraphs of the complaint designated "60" through "63" and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE EIGHTH CAUSE OF ACTION

TWENTY-SIXTH: Answering the paragraph of the complaint designated "64," defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated "1" through "63" with the same force and effect as if herein set forth at length.

TWENTY-SEVENTH: Denies the allegations contained in the paragraphs of the complaint designated "65" through "68" and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE NINTH CAUSE OF ACTION

TWENTY-EIGHTH: Answering the paragraph of the complaint designated "69," defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated "1" through "68" with the same force and effect as if herein set forth at length.

TWENTY-NINTH: Denies the allegations contained in the paragraphs of the complaint designated "70" through "73" and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE TENTH CAUSE OF ACTION

THIRTIETH: Answering the paragraph of the complaint designated "74" defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated "1 through "73" with the same force and effect as if herein set forth at length.

THIRTY-FIRST: Denies the allegations contained in the paragraphs of the complaint designated "75" and "76" and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE ELEVENTH CAUSE OF ACTION

THIRTY-SECOND: Answering the paragraph of the complaint designated "77," defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated "1" through "76" with the same force and effect as if herein set forth at length.

THIRTY-THIRD: Denies the allegations contained in the paragraphs of the complaint designated "78" and "79" and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE TWELFTH CAUSE OF ACTION

THIRTY-FOURTH: Denies the allegations contained in the paragraphs of the complaint designated "80" and "81" and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

**AS AND TO THE SECOND SECTION OF THE COMPLAINT DESIGNATED
"ELEVENTH CAUSE OF ACTION"**

THIRTY-FIFTH: Answering the paragraph of the complaint designated "82," defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated "1" through "81" with the same force and effect as if herein set forth at length.

THIRTY-SIXTH: Denies the allegations contained in the paragraphs of the complaint designated "83" through "86" and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

FOR A FIRST DEFENSE

THIRTY-SEVENTH: That whatever damages may have been sustained at the time and place alleged in the complaint by plaintiff were caused, in whole or in part, by the culpable conduct of plaintiff and without any negligence on the part of defendant. Damages, if any, are to be diminished proportionally to the culpable conduct of the plaintiff.

FOR A SECOND DEFENSE

THIRTY-EIGHTH: That the equitable share of liability, if any, of defendant JAMES CAPOZIELLO, s/h/a "DOHMH DEPUTY COMMISSIONER JAMES CAPOZIELLO," shall be determined pursuant to the provisions of Article 16 of the CPLR.

FOR A THIRD DEFENSE

THIRTY-NINTH: That one or more of the causes of action in the complaint fail to state a cause of action upon which relief may be granted.

FOR A FOURTH DEFENSE

FORTIETH: That plaintiff has not met the conditions precedent to the commencement of this action as required by law.

FOR A FIFTH DEFENSE

FORTY-FIRST: The party asserting the cause of action has no legal capacity to sue and therefore the action is a nullity.

FOR A SIXTH DEFENSE

FORTY-SECOND: This action is barred or defendant is entitled to a set-off against any award herein as plaintiff has previously recovered sums for all or part of the damages claimed herein.

FOR A SEVENTH DEFENSE

FORTY-THIRD: Plaintiff has failed to mitigate the alleged damages claimed herein.

FOR A EIGHTH DEFENSE

FORTY-FOURTH: That the complaint does not set forth a basis for punitive damages.

FOR A NINTH DEFENSE

FORTY-FIFTH: That any claims for punitive damages contained in the complaint fail to state a claim upon which relief may be granted, violate various provisions of the Constitution of the United States and the State of New York, and violate various statutory proscriptions thereof.

FOR A TENTH DEFENSE

FORTY-SIXTH: That plaintiff is not entitled to recover damages in this action under 42 U.S.C. §1983.

FOR A ELEVENTH DEFENSE

FORTY-SEVENTH: Plaintiff may not properly assert a cause of action against the answering defendant for violation of 42 U.S.C. §1983.

FOR A TWELFTH DEFENSE

FORTY-EIGHTH: That this defendant reserves the right to amend its answers and/or affirmative defenses that may be determined applicable in the future by discovery in this matter.

FOR A THIRTEENTH DEFENSE

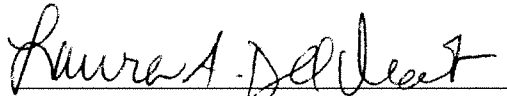
FORTY-NINTH: That this defendant denies any and all allegations of plaintiff's complaint not specifically admitted herein.

WHEREFORE, defendant JAMES CAPOZIELLO, s/h/a "DOHMH DEPUTY COMMISSIONER JAMES CAPOZIELLO," demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York
November 30, 2007

Respectfully submitted,

HEIDELL, PITTONI, MURPHY & BACH, LLP
Of Counsel to Richard Levy, General Counsel of
New York City Health and Hospitals Corporation

By: 
LAURA A. Del VECCHIO (LD 4992)
Attorneys for Defendant
JAMES CAPOZIELLO, s/h/a
"DOHMH DEPUTY COMMISSIONER
JAMES CAPOZIELLO"
Office & P.O. Address
99 Park Avenue
New York, New York 10016
(212) 286-8585

TO: ANDREW B. STOLL, ESQ.
Stoll, Glickman & Bellina, LLP
Attorney for Plaintiff
71 Nevins Street
Brooklyn, New York 11217
(718) 852-3710
astoll@stollglickman.com